



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,721	12/19/2001	Helmut Wassermann	HAMMON-002	1611

530 7590 10/03/2003

LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK
600 SOUTH AVENUE WEST
WESTFIELD, NJ 07090

EXAMINER

LANDREM, KAMRIN R

ART UNIT	PAPER NUMBER
----------	--------------

3738

DATE MAILED: 10/03/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/936,721

Applicant(s)

WASSERMANN ET AL.

Examiner

Kamrin R. Landrem

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-65 is/are rejected.
- 7) ☒ Claim(s) 66-68 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 29-31, 50, 54,56 are rejected under 35 U.S.C. 102(b) as being anticipate by Dobos-Hardy (USPN 5,092,886).

With reference to Figure 1, Dobos-Hardy discloses a device having first, second, and third cross-sectional areas, the first area in location relative to reference numeral 7, the second area located near numeral 12 and the third area disposed in the area of numeral 6. At least one cross-sectional area of the first and second areas is smaller than the cross-sectional area of the third area. The first cross-sectional area has a portion that is larger in cross-sectional area than the second area. An inlet 5 is located in first area and outlet 3 with sphincter mechanism 17 disposed in the third area with pressure acting as a control means for the valve thus regulating pressure (5:59-64). The internal structures are modular however the outer cover 1 provides a continuous outer surface. Tube 8 acts as a fluid guide means for guiding fluid from the third area to the first area. Outlet 4 can be used as expulsion means for removing liquid from the device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3738

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 32-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobos-Hardy in view of Yamazaki (USPN 5,147,388).

As discussed above, Dobos-Hardy discloses the apparatus as claimed however Dobos-Hardy fails to include a pump and a power supply. Yamazaki teaches a device that comprises a screw pump 21 to move fluid through the device by means of a driving motor 5 that is comprised of a power battery 17 connected to an external charger (5:7-12), sensors 26,27,28 for detecting conditions within device, and an alarm signal that sounds to draw attention to changing conditions (5:52-55). The screw pump is used because it can be made simple in construction and small in size while providing high durability and reliability (2:59-63). Therefore in view of the teachings it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the apparatus disclosed by Dobos-Hardy by incorporating the pump, power supply and signals as taught by Yamazaki to provide a small device that is durable and reliable.

Claims 51-53 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobos-Hardy in view of Yamazaki.

As discussed above, Dobos-Hardy as modified discloses the claimed apparatus however Dobos-Hardy as modified by Yamazaki fails to disclose a plurality of inlets and valves. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a plurality of key components such as inlets and valves, since it has been held that

mere duplication of the essential working parts of a device involves only routine skill in the art (see MPEP 2144.04).

Claims 57-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobos-Hardy (USPN 5,092,886) in view of Boveja et al (USPN 6,366,814 B1).

As discussed above Dobos-Hardy discloses the apparatus as claimed however Dobos-Hardy fails to disclose a fixing element for attaching apparatus to the human body. In Figure 4 Boveja teaches an external stimulator 42 for treating urological disorders comprising an expandable fixing element 44 for positioning the apparatus and connection means 38 for connecting fixing element to the apparatus. Therefore in view of the teachings it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the apparatus of Dobos-Hardy by incorporating the external fixation means as taught by Boveja to secure the apparatus to the patient.

Allowable Subject Matter

Claims 66-68 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3738

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamrin R. Landrem whose telephone number is 703-305-8061. The examiner can normally be reached on 8:00-5:00, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Kamrin Landrem
Examiner
AU 3738

KRL



CORRINE McDERMOTT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700